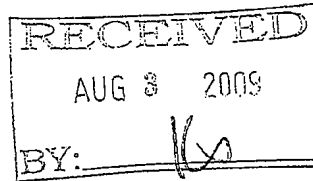




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BERKELEY LAW AND TECHNOLOGY GROUP
1700 N.W. 167TH PLACE, SUITE 240
BEAVERTON OR 97006

MAILED

JUL 21 2009

OFFICE OF PETITIONS

In re Application of
Vinod Chintamani Malshe et al
Application No. 10/552,422
Filed: October 7, 2005
Attorney Docket No. 044-P001

DECISION ON PETITION

This is a decision on the petition, filed May 6, 2009, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

This application was held abandoned for failure to reply to the Notice of Non-Compliant Amendment (Notice) mailed August 26, 2008, which set a shortened statutory period of ONE MONTH or THIRTY DAYS from the mailing date of the Notice to reply. A Notice of Abandonment was mailed on March 17, 2009.

Petitioner asserts that the Notice mailed August 26, 2008 was not received.

A review of the written record indicates that the Notice mailed August 26, 2008 was returned to the U.S.P.T.O as undelivered on September 3, 2008. The Notice of Abandonment mailed March 17, 2009 was also returned on March 24, 2009.

SCANNED
8-11-09 K6

FILED
AUG 12 2009 K6

Petitioner states that "On April 7, 2007, the physical and mailing addresses of the Attorneys of Record was changed to 17933 NW Evergreen Parkway, Suite 250, Beaverton, Oregon, 97006 ..."

Petitioner contends that the first time that Applicants' Attorneys were made aware of the Notice was a phone call from Examiner Caralynne Helm on March 2, 2009.

On March 3, 2009, a Change of Address was submitted. However, the change of address appears to be improper. The Attorney and Registration number is not of record in the instant application.

The Notice of Abandonment mailed on March 17, 2009, states that "the last correspondence from the Office was returned as undeliverable due to address change not being filed appropriately in application. Applicant's representative was telephoned and notified of issue."

Petitioner could have called the Office to inquire of the status of the change of address, especially, since applicant was made aware of the returned correspondence on March 2, 2009. **Even though applicant was made aware of the improper change of address submitted on March 3, 2009, the Office is not in receipt of a proper change of address or Power of Attorney /change of address being submitted.**

Office records only indicate receipt of a change of address on March 3, 2009, after the mailing of the Notice on August 26, 2008. However, petitioner made it clear that the physical and mailing address of the Attorneys of Record was changed on April 7, 2007. In view of the above, the evidence submitted is not convincing to substantiate the granting of a petition to withdraw the holding of abandonment in the above application.

If petitioner cannot supply the evidence necessary to withdraw the holding of abandonment, or simply does not wish to, petitioner should consider filing a petition under 37 CFR 1.137(b) stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the \$1,620.00 petition fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be delivered through one of the following mediums:

By mail: Mail Stop PETITIONS
 Commissioner for Patents
 Post Office Box 1450
 Alexandria, VA 22313-1450

By hand: Customer Service Window
 Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

By fax: (571) 273-8300
 ATTN: Office of Petitions

By internet: EFS-Web
 www.uspto.gov/ebs/efs_help.html
 (for help using EFS-Web call the
 Patent Electronic Business Center
 at (866) 217-9197)

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

cc:

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